IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9479 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAKESH ALIASKALU AMARSHI

Versus

DISTRICT MAGISTRTE

Appearance:

1. Special Civil Application No. 9479 of 2002

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/03/2003

ORAL JUDGEMENT

By filing this petition, the petitioner, brother-in-law of the detenu has challenged the detention

order dated 23.8.2002, by which the detenuhe is detained as a "dangerous person" under the Prevention of Antisocial Activities Act, (for short "the PASA" Act). Along with the order of detention, he is also served with the grounds of detention of the same date. In the said grounds, there is a reference of six criminal cases pending against the petitioner under Section 379 read with Section 114 of the Indian Penal Code. It is alleged against the detenu that he is in the habit of committing theft. After considering the above cases and the statements of the witnesses the detention order is passed. The said order of detention is under challenge on various grounds.

2. Ms.D.R.Kachhwa, Ld. Advocate for the petitioner, at the time of hearing of this petition, submitted that all cases are of theft and the same are individual offences and therefore, it cannot be said that there is breach of public order. She further submitted that at the most, it is a matter of breach of law and order and not public order. It is also submitted that the last registered case is on 1.7.2002 and the detention order is passed after more than one and half months thereafter. She submitted that even though the statements of some witnesses were recorded later on, it is merely to cover up the said delay.

In this behalf, reference is made to the decision of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City & Others reported in 1997 (1) G.L.H. 381 wherein this Court has observed in Para 21 as under:-

"21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appeared to be some substance in the contention of the petitioner that these two unregistered cases have been referred

> only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppli. SCC 61."

She has also relied on the judgement rendered by this Court (Coram: H.K.Rathod, J) in Special Civil Application No. 11325 of 2000. In that view of the matter, it is not necessary to examine whether it is breach of public order or law and order.

3. Mr.Pancholi, Ld. AGP however, submitted that in view of the statements, the so-called delay is explained. He has relied on the affidavit in reply. Considering that the last offence was registered on 1.7.2002, it was not necessary for the Authority to wait for such long time and in view of these six cases, the detenu could have been detained under preventive detention if from that material, there is something to suggest that the detenu is a dangerous person. It is also required to be noted that while granting the bail, the Magistrate can always impose conditions that if the offence is repeated than bail is liable to be cancelled. Considering the aforesaid aspect of the matter and the above judgements of this Court, on the ground of delay alone, this petition is required to be allowed.

4. On the aforesaid ground, this petition is allowed. The order of detention dated 23.8.2002 is quashed and set aside. The detenu, Rakesh alias Kalu Amarshi is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar, J)
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